



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Elliot S. Berke, Esq.
Berke Farah LLP
2101 L Street, N.W.
Washington, D.C. 20037

MAY 27 2015

RE: MUR 6832
Grant Lally for Congress, Inc., and
Christopher Nolan in his official
capacity as treasurer

Dear Mr. Berke:

On May 30, 2014, the Federal Election Commission notified your clients, Grant Lally for Congress and Christopher Nolan in his official capacity as treasurer ("Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 19, 2015, the Commission decided, on the basis of the information in the complaint and information provided by you, to dismiss the allegations that the Committee violated 52 U.S.C. § 30120(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Allen".

Mark Allen
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Grant Lally for Congress, Inc., and
Christopher Nolan in his official
capacity as treasurer

MUR 6832

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Grant Lally for Congress, Inc., and Christopher Nolan in his official capacity as treasurer (the "Committee").

The Complaint alleges that the Committee, the authorized committee of 2014 Congressional candidate Grant Lally,¹ failed to include required disclaimers on its website, on a Wordpress blog that allegedly belongs to the Committee, and during a robo call. The Committee contends that its website and the robo call contained the proper disclaimers, and that it "does not own [the Wordpress blog]." Resp. at 1.

The Commission has broad discretion to determine how to proceed with respect to complaints.² In this matter, the Commission concludes that an investigation would not be a prudent use of resources. Thus, the Commission exercises its prosecutorial discretion to dismiss the allegations in this matter.

II. LEGAL ANALYSIS

When an authorized political committee makes a disbursement for the purpose of financing a public communication, the communication "shall clearly state that [it] has been paid

¹ Lally was a candidate in the general election in New York's 3rd Congressional District.

² See *Heckler v. Chaney*, 470 U.S. 821 (1985). See also Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (stating that "[p]ursuant to the exercise of its prosecutorial discretion, the Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation, or when the Commission lacks majority support for proceeding with a matter for other reasons.").

1 for by such authorized political committee.” 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C.
2 § 441d(a)(1)).³ See also 11 C.F.R. § 110.11(a)-(b). A disclaimer is also required on websites of
3 political committees that are available to the general public. 11 C.F.R. § 110.11(a)(1). Public
4 communications include, *inter alia*, telephone banks to the general public and any other form of
5 general public political advertising. 52 U.S.C. § 30101(22) (formerly 2 U.S.C. § 431(22));
6 11 C.F.R. § 100.26. “Telephone bank” means more than 500 telephone calls of an identical or
7 substantially similar nature that were made within any 30-day period. 52 U.S.C. § 30101(24)
8 (formerly 2 U.S.C. § 431(24)); 11 C.F.R. § 100.28. “The term *general public political*
9 *advertising* shall not include communications over the Internet, except for communications
10 placed for a fee on another person’s Web site.” 11 C.F.R. § 100.26.

11 **A. Committee’s Website**

12 In support of its allegation that the Committee’s website lacked a required disclaimer, the
13 Complaint included a copy of a screenshot of the website’s homepage
14 (www.grantlallyforcongress.com) that purportedly shows the website as it existed on May 19,
15 2014. See Compl., Ex. 1. There is no disclaimer indicating that the Committee paid for the
16 website apparent in the screenshot submitted with the complaint. The Committee asserts that the
17 website “did have a disclaimer on May 19, 2014,” but offers no support for this assertion and
18 does not specifically address the screenshot submitted by Complainant. Resp. at 1.

19 If the Committee’s website did at one time fail to include a required disclaimer in
20 violation of 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)), see also 11 C.F.R.
21 § 110.11(a)(1), the Committee appears to have taken remedial action by placing a proper
22 disclaimer on its website — the website currently contains a disclaimer that states, “Paid for by

³ On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

1 Grant Lally for Congress, Inc.” Further, the Committee also noted its website address on its
2 Statement of Organization filed with the Commission on February 25, 2014, connecting the
3 website to the Committee on the public record. Because the website contained some identifying
4 information, and the Committee’s website currently contains the proper disclaimer, the
5 Commission exercises its prosecutorial discretion and dismisses the complaint as to the
6 Committee’s website. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

7 **B. Wordpress Blog**

8 The Complaint also alleges that “Lally has another website for his campaign” — a
9 Wordpress blog located at the address <http://isupportlallyforcongress.wordpress.com> — and that
10 it lacked a required disclaimer. Compl. The Complaint included a copy of a screenshot of the
11 blog that purportedly shows the blog as it existed on May 19, 2014. *See id.*, Ex. 2. The
12 screenshot shows two postings dated March 10, 2014: a reprint of an article from another blog
13 discussing Lally’s candidacy, and a posting with Lally’s headshot photograph and a quote from
14 Lally’s announcement of his candidacy. *See id.* Headings on the blog pages include “Lally For
15 Congress 2014” and “ON THE CAMPAIGN TRAIL LALLY FOR CONGRESS,” and tags
16 above the postings include “Grant Lally,” “Lally for Congress,” “Long Island,” “Lower Taxes,”
17 and “Third Congressional District of New York.” *Id.* At the bottom of the screenshot, the blog
18 states, “Follow ‘Lally For Congress 2014.’” *See id.* There is no disclaimer apparent on the
19 screenshot.

20 In its response regarding the blog, the Committee asserts that it “does not own the second
21 website referenced in the complaint,” but provides no information about whether it had any
22 involvement with the content of the blog. Resp. at 1.

1 The Committee squarely denies ownership of the blog, which in any event, no longer
2 exists. The Commission concludes that an investigation would not be a prudent use of resources.
3 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the Complaint
4 as to the Wordpress blog.⁴

5 **C. Robo Call.**

6 The Complaint also asserts that "Mr. Lally's campaign has been robo-calling voters in the
7 district" and alleges that the call lacked a required disclaimer. Compl. at 1. In response, the
8 Committee notes that the Complaint does not refer to a specific robo call, but asserts that all of
9 its communications had the proper disclaimer. Resp. at 1.

10 Under these circumstances, the Commission concludes that an investigation would not be
11 a prudent use of resources and exercises its prosecutorial discretion to dismiss the allegations
12 related to the robo call.⁵

⁴ See Heckler, *supra* note 2.

⁵ See Heckler, *supra* note 2.